

Remarks/Arguments:

The pending claims are 68, 70-81, 84, 93-112 and 129-133.

Applicants thank the Examiner for indicating in paragraph 6 of the Office Action that dependent claims 72, 76, 97, 103 and 133 would be allowable if rewritten in independent form. Because Applicants believe that all of the independent claims are allowable, they have not rewritten the allowable dependent claims at this time.

CLAIM REJECTIONS UNDER 35 U.S.C. § 102(e)

Paragraph 3 of the Office Action has rejected claims 68, 70, 84, 93-96, 98-102, 104, 105, 107-110, 112, and 129-132 under 35 U.S.C. § 102(e) as anticipated by Barone et al. (U.S. Patent No. 5,360,443). The rejection is respectfully traversed.

Claim 68

Claim 68 recites, in part:

a second graft defining a lumen and adapted to be intravascularly inserted into a lumen of said first graft

Paragraph 3, page 2 of the Office Action asserts that this feature is disclosed in Figs. 7-9, 11, col. 5, line 40-col. 7, line 19 and col. 9, lines 19-51 of Barone, asserting on p. 3, lines 2-4 of the Office Action that Barone discloses a second graft 192 that is adapted to be intravascularly inserted into a lumen of the first graft 160. Applicants disagree.

Barone element 192 is not a graft. It is a securing means. See, e.g., col. 8, lines 26-27, 29, 36. Securing means 192 is not intravascularly inserted into a lumen of tube 160, nor adapted to be intravascularly inserted. Instead, Figs. 7 and 8 show securing means 192 is fixed to tubular passageways 191 to maintain passageways 191 in their desired positions and to insure no movement of passageways 191 that might be caused by body movements. (col. 8, lines 45-53).

Contrary to the Office Action's suggestion, column 9, lines 19-51 does not disclose that securing means 192 is adapted to be intravascularly inserted into a lumen of tube 160. Instead, this section of Barone, in combination with Figs. 9-12, describes how right passageway 191R is maneuvered into right iliac artery 153R. Wire 200 is introduced into the right femoral artery 202R and passed upward through right iliac artery 153R through aorta 152, down left iliac artery 153L and into left femoral artery 202L. After apparatus 180 is delivered into aneurysm 151 and sheath 186 is removed, wire 200 is sutured to the right passageway 191R of tube 160 and pulled into right iliac artery 153R. Even if a securing

means 192 is attached to right passageway 191R (which is not shown in Fig. 11), the securing means would be pulled into right iliac artery 153R along with right passageway 191R. There is no disclosure in Barone that the process described in column 9, lines 19-51 and illustrated in Figs. 9-12 explain or show that securing means 192 is intravascularly inserted into a lumen of tube 160.

Furthermore, claim 68 recites "a second graft defining a lumen." Securing means 192 does not define a lumen because it has a plurality of slots. Col. 8, lines 26-27; col. 6, lines 32-35.

For all of the above reasons, claim 68 is not subject to rejection under 35 U.S.C. § 102(e) as anticipated by Barone.

Claim 70

Claim 70 recites, in part:

- a primary graft body, . . . said primary graft body comprising a first portion and a second portion;
- a supplemental graft body, . . . said supplemental graft body comprising a first end and a second end, said first end of said supplemental graft body being dockable to said second portion of said primary graft body while inside of a vessel.

The Office Action considers tube 160 as the primary graft body and securing means 192 as the supplemental graft body. For the reasons explained above, there is no disclosure in Barone that securing means 192 is "dockable" to tube 160 "while inside of a vessel."

Accordingly, claim 70, and dependent claim 84, are not subject to rejection under 35 U.S.C. § 102(e) as anticipated by Barone.

Claims 93-96, 98-102, 104, 105, 107-110, 112

Claim 93 recites, in part:

- a first graft body, said first graft body having . . . a first graft body outlet . . .
- a second graft body, said second graft body having a second graft body inlet end . . .
- said second graft body inlet end being attachable . . . with said first graft body outlet while inside of a vessel.

Claims 94-96 and 98-102, 104, 105 depend from claim 93.

Independent claims 107-109, similarly to claim 93, each recites, in part:

said inlet end of said second graft body being attachable . . . while inside of a vessel.

Claims 110 and 112 depend from claim 109.

As explained above, Barone does not disclose that securing means 192 is attachable to tube 160 "while inside of a vessel." For the above reasons, claims 93-96, 98-102, 104, 105, 107-110, and 112 are not subject to rejection under 35 U.S.C. § 102(e) as anticipated by Barone.

Claims 129-132 depend from claim 109. Accordingly, these claims are not subject to rejection at least for the same reasons that claim 109 is not subject to the same rejection.

In addition, claims 129-132 recite features that are not shown in Barone and which provide additional reasons why claims 129-132 are not subject to rejection under 35 U.S.C. § 102(e) as anticipated by Barone.

Claim 129 recites, in part:

said portion of different radiopacity facilitating proper alignment of said first graft body and said second graft body with respect to one another during said engagement.

Paragraph 3, page 3 of the Office Action contends that Barone discloses that one portion of the first graft body or the metal wire structure inherently has different radiopacity than another portion. The Office Action, however, does not assert that Barone discloses "said portion of different radiopacity facilitating proper alignment of said first graft body and said second graft body with respect to one another during said engagement."

"A functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used." MPEP § 2173.05(g). As shown above, Barone does not disclose that its securing means 192 is attachable to tube 160 while inside a vessel. In addition, Barone does not disclose a "portion of different radiopacity facilitating proper alignment of said [tube 160 and said securing means 192] with respect to one another during said engagement." For these additional reasons, therefore, claim 129 is not subject to rejection under 35 U.S.C. § 102(e) as anticipated by Barone.

Claim 130 recites, in part:

radiographic indicia defined on at least one of said first graft body and said second graft body and said metal wire structure. . .

wherein the composite radiographic image of said radiographic indicia varies with the rotational orientation of said at least one of said first graft body and said second graft body and said metal wire structure in a body lumen.

Since Barone does not disclose radiographic indicia, it does not disclose these features. For these additional reasons, therefore, claim 130 is not subject to rejection under 35 U.S.C. § 102(e) as anticipated by Barone.

Claim 131 recites, in part:

a second introducer for (a) introducing said second graft body of said graft. . . in a radially compressed state into the vessel and into a portion of said first graft body, and (b) deploying said second graft body to connect to said portion of said first graft body. . . .

Barone does not disclose a second introducer for introducing securing means 192 "in a radially compressed state into the vessel and into said portion of" tube 160. Barone also does not disclose a second introducer that deploys the securing means 192 "to connect to said portion of" tube 160. For these additional reasons, therefore, claim 131 is not subject to rejection under 35 U.S.C. § 102(e) as anticipated by Barone.

Claim 132 recites, in part:

one of said first graft body and said second graft body being at least partially supported by a bifurcated stent member, defining two lumens.

In Barone, neither the tube 160 nor the securing means is "at least partially supported by a bifurcated stent member, defining two lumens." For these additional reasons, therefore, claim 132 is not subject to rejection under 35 U.S.C. § 102(e) as anticipated by Barone.

For all of the above reasons, claims 93, 107-109 and dependent claims 94-96, 98-102, 104, 105, 110, 112, and 129-132 are not subject to rejection under 35 U.S.C. § 102(e) as anticipated by Barone.

CLAIM REJECTIONS UNDER 35 U.S.C. § 103(a)

In paragraph 5 of the Office Action, claims 71, 73-75, 77-81, 106, and 111 have been rejected under 35 U.S.C. § 103(a) as unpatentable over Barone et al. in view of Wallsten (U.S. Patent No. 4,655,771). The rejection is respectfully traversed.

Claims 71, 73-75, and 77-81 depend from claim 70, the features of which as explained above, are not all shown in Barone. Wallsten also fails to show all the features recited in claim

70 as well as the features recited in claim 70 that are not shown in Barone. For example, Wallsten does not show a supplemental graft body that is "dockable to said primary graft body while inside of a vessel." Even if Barone were combined with Wallsten, the combined references would not show all the features of claim 70. Since claim 70 would not be subject to a rejection over Barone in view of Wallsten, dependent claims 71, 73-75, and 77-81 are likewise not subject to such a rejection.

Claim 106 depends from claim 93 and claim 111 depends from claim 109. As explained above, the features of claims 93 and 109 are not all shown in Barone. Wallsten also fails to show all of the features recited in claims 93 and 111 that are not shown in Barone. For example, Wallsten does not show a second graft body that is "attachable in an overlapping relationship" with a first graft body "while inside of a vessel." Even if Barone were combined with Wallsten, the combined references would not show all the features of claims 93 and 109. Since claims 93 and 109 would not be subject to a rejection over Barone in view of Wallsten, dependent claims 106 and 111 are likewise not subject to such a rejection.

**THE PTO IS REQUESTED TO OBTAIN THE REQUIRED
APPROVAL OF THE TC DIRECTOR FOR THESE REJECTIONS**

Claim 68 was substantially copied from U.S. Patent No. 6,582,458. Claims 70-84 were substantially copied from U.S. Patent No. 6,613,073. Claims 93-112 were substantially copied from U.S. Patent No. 6,685,736. Both Barone and Wallsten were cited of record in all three patents. Based on the foregoing, the MPEP requires the approval of the TC Director before these claims may be rejected over Barone and/or Wallsten. Specifically, MPEP § 1003 states, in part:

The following is a list of matters which are submitted to the appropriate Technology Center Director, together with a reference to any section of this manual where such matters are more fully treated.

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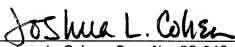
6. Actions which hold unpatentable claims copied from a patent for interference purposes where the grounds relied upon are equally applicable to the patentee, MPEP § 2307.02.

For these reasons, Applicants request that all of the claim rejections based upon Barone and/or Wallsten be withdrawn unless the rejection is approved by the TC Director.

CONCLUSION

For all of the above reasons, claims 68, 70-81, 84, 93-112 and 129-133 are in condition for allowance and an early notice of allowance is respectfully requested.

Respectfully submitted,



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